

PUBLIC HEARING

APRIL 23, 2014

A public hearing of the Council of the County of Kaua'i was called to order by JoAnn A. Yukimura, Vice Chair, Planning Committee, on Wednesday, April 23, 2014, at 1:39 p.m., at the Council Chambers, 4396 Rice Street, Room 201, Historic County Building, Līhu'e, and the presence of the following was noted:

Honorable Mason K. Chock, Sr.
Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura

Excused: Honorable Tim Bynum
Honorable Jay Furfaro

The Clerk read the notice of the public hearing on the following:

“Bill No. 2541 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 14, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE PUBLIC ACCESS, OPEN SPACE, AND NATURAL RESOURCES PRESERVATION FUND,”

which was passed on first reading and ordered to print by the Council of the County of Kaua'i on March 27, 2014, and published in The Garden Island newspaper on April 4, 2014.

The following communications were received for the record:

1. Felicia Cowden, dated April 8, 2014
2. Jonathan Jay, dated April 9, 2014
3. Carl J. Berg, Jr., date April 22, 2014

EDUARDO TOPENIO, JR., Administrative Assistant to the County Clerk: Committee Vice Chair, we do have four (4) speakers to testify at this time. The first one is Mr. Ted Blake.

Ms. Yukimura: Okay, Teddy, please come forward. Please state your name and present your testimony.

There being no objections, the rules were suspended to take public testimony.

TED BLAKE: *Aloha auinala kākou.*

Ms. Yukimura: *Aloha.*

Mr. Blake: *‘O Kawahinehelelani ko’u inoa. Ko’u mau makua o Hartwell Kawahinehelani ke kāne a me Grace Ng Moi ka wahine. No Kōloa mai au, he pua o Kaua’i, he pua o Kōloa. I am Ted Kawahinehelelani Blake. I was born on Kaua’i and raised in Kōloa. I am testifying today as a private individual. Thirteen (13) days ago, I was on a field trip to the east side of Kaua’i to visit public accesses. This was a culturally eye opening and shocking experience. Our first stop was Pāpa’a and we traversed down a precipitous path from the*

parking area to the south shore cliffs of Pāpa'a Bay. We then continued further down to the *pohaku* well above the water line on a more difficult portion of the trail. I walked down a steep sheer trail to get a glimpse of the beach area. I noticed remnants of a *loko'i'a*. I could barely make out the *heiau* overlooking the beach towards the middle of the bay. This piqued my interest. Returning back up the path to our bus was grueling and even more strenuous. We then went to the north side of the bay where the County still owns a road. This is much closer to the beach, but there is no access from the end of the road to the beach. The choices here are risk injury using the long access and steep access route or look for a safer route that may require trespassing over private property to practice my religious and gathering rights. We then moved on to Kīlauea Stream. The stream starts in the *ahupua'a* of Kīlauea at Pu'u Ka Ele Stream, joins up with Kahiliholo Stream and Kalihiwai *ahupua'a*, and ends up being the Kīlauea Stream. As Kīlauea Stream makes its way to the sea and goes over Kīlauea Falls. Now, Kīlauea Falls has been completely cutoff from the public. There are no special days to visit. I have heard comments from many disgruntled residents of Kīlauea about being restricted from visiting the falls. They come from all walks of life. Teachers, professional, business owners, and youth. Where do residents from these *ahupua'a* practice their gathering and religious rights guaranteed them, thirty-three (33) years ago in the ratified the amendments of our last Constitutional Convention? The next question is, how do we work to achieve balance here? The easiest way is to condemn and purchase easements. Bill No. 2541 before us today takes sixty-six percent (66%) of the funding away from the...

Mr. Topenio: Three (3) minutes.

Mr. Blake: ...Public Access, Open Space and Natural Resources Preservation Fund.

Ms. Yukimura: That is three (3) minutes, but you have three (3) more.

Mr. Blake: I am sorry.

Ms. Yukimura: It is three (3) minutes, and you have three (3) more.

Mr. Blake: I will be done shortly. Which was setup for the specific purpose of funding access routes. Is there a one (1) year sunset on Bill No. 2541 for the Open Space Commission? Is there a rider adding an additional sixty-six percent (66%) to the fund next year so we can replenish the sixty-six percent (66%) lost to help shore up this year's County's budget? I humbly request that the language to replenish the moneys taken from the fund be added to Bill No. 2541. I would like to see a one (1) year sunset on the term of the taking and finally to restore the one and a half percent (1.5%) of all certified real property taxes collected each year back to the fund. The economic forecast for our island is for more construction in the coming year and this includes more resort and Transient Vacation Accommodations (TVA). We will have more restricted accesses to deal with. Without the funding, the Open Space Commission, made up of volunteers and without funds to help pay for accesses, will be traveling aimlessly in a *wa'a* with no sails and no steering paddles. Thank you.

Ms. Yukimura: Thank you. Any questions for Mr. Blake? If not, can you make your written testimony available?

Mr. Blake: Sure.

Ms. Yukimura:

Or did you already?

Mr. Blake:

Not yet.

Ms. Yukimura:
Next speaker, please.

Okay. If staff could get a copy. Thank you.

Mr. Topenio:
Carl Berg.

Next speaker is Felicia Cowden, followed by

Ms. Yukimura:

Aloha Felicia.

FELICIA COWDEN: *Aloha.* I am Felicia Cowden and I am also here to speak to supporting the Open Space Commission with as much money as possible. I would like to even step it up on it. I know that the County does not have a lot of money, but I think you might all consider leveraging these developers a little bit for something when they are building a new subdivision, that they have money that actually goes towards open space and that they are forced to support what they are required of. I went on the field trip also with the Open Space Commission both this time and the time before and was really profound on the north and east sides, probably the other side too, but I do not live there, is that all of these really high-end homes keep getting built in places and seemingly with so much money that they probably rival the County's budget. Their family probably has as much every year as the County budget, and we have to be planning on them having the intention of taking everything that they can take, and to stop any access to the beaches or into the mountains. It seems like our mountain access is pretty much gone. We really, really need to work on that. I think it is for the good of the people that are the rich investors that have that. I want to say that here are many nice well off people, but the trending is to just cut everybody off and when we see this new pathway that is being suggested there in Waipake area, it is a mile long trail and then it comes to a drop off that is above a little cliff line there. There is so much intention to just stop people from being able to have access to the beach. It really does feel like living in a gated community and in my zip code, I think we really do have that point zero one percent (0.01%) that is fabled in America now and it is really cutting off a lot for all of us. So, I appreciate whatever level of support that you folks can have and to empower the Open Space Commission, perhaps more than they already are. It seems like they are just in a position to beg and they should be in a position to demand. Thank you.

Ms. Yukimura: Thank you, Felicia. Questions? I want you to know, there is a park dedication fee that requires dedication from subdividers and developers. It has been more...well, it applies across the board, not just to the coastal areas or to the mountain areas and has been used mainly for active parks like at Kilauea or at our stadium. That kind of thing, but the Open Space Fund is really the intended fund for shoreline and public access and acquisition for park land and et cetera.

Ms. Cowden: I think it is pretty clear with developers that there is no intention of having people have access. Like we see it again and again. So, I appreciate help with the parks, but they need to not own the beach, the mountains, and everything. Thank you so much.

Ms. Yukimura:
present Bill?

So, do you have a position for or against the

Ms. Cowden: I have a position that I wish that money was being taken away.

Ms. Yukimura: Okay.

Ms. Cowden: I would like to see money not be taken away.

Ms. Yukimura: Okay.

Ms. Cowden: And if it is going to be taken away, I second what Teddy said and that is a one (1) year sundown and hopefully with a payback.

Ms. Yukimura: Alright. Thank you.

Ms. Cowden: Thank you.

Ms. Yukimura: Next speaker, please.

Mr. Topenio: Next speaker is Carl Berg, followed by Pat Gegen.

CARL BERG: *Aloha.*

Ms. Yukimura: *Aloha.*

Mr. Berg: My name is Carl Berg. I am speaking to you today as a member of the State of Hawai'i's Legacy Land Conservation Commission. I have been on that Commission since it was formed in 2007. I did two (2) full terms with that, which was my limitation at which point the Governor asked me to stay on for the extension of my time limit, but I have asked somebody else to take over. I have been with the Legacy Land Commission. I have seen all of the Counties come in and use their Open Space Funds to try to put aside lands. I was amazed that of the twenty-four (24) pieces that have been put aside, only two (2) have come from this County. We are totally underrepresented and I feel that the reason for that is that we have the smallest amount of money sitting there waiting to be allocated. I have seen miles of coastline on the Big Island set aside in conservation for archeological, cultural, and public use purpose. I have not seen anything like that except two (2) spots at Hanalei at the pier and at Rock Quarry, Kahili, but we have so many issues going on this island with Maha'ulepu, with the Ka'aloa, and with Ale Koko, that we should be much more active at preserving archeological areas and open space in getting secure beach access that is not going to be taken away. Therefore, I feel that we should be increasing the amount of money in our Open Space Fund as opposed to any decrease. If there is at this point a need to decrease it by some amount, that we should at least double that amount in current years. I also would admonish the County's Open Space Commission to become much more active in proposing to put things aside because the State Legacy Land Conservation only requires twenty-five percent (25%) of the money to be put up. So, you put up one million dollars (\$1,000,000) and you get three million dollars (\$3,000,000) from the State. That is a great deal. It is going to go on for a while because that Legacy Land Fund has not been cut back. So, I am here and testify, having judged all the different projects that go before the State, that we have wonderful places here there we need to preserve, set aside, and do what is right. We should not be thinking about cutting back money.

Ms. Yukimura: Thank you for your testimony, Dr. Berg. Any questions? I want to thank you for your assistance as a member of the Legacy

Lands Commission in acquiring the Hodge's property at Black Pot Beach Park, which has been...you know, it was the project of the Kaua'i Public Land Trust and the County of Kaua'i. We got the last ocean front piece that was adjacent to Black Pot Beach Park and that I think, inspired the County to go and get the Sheehan lands along the river. So, thank you very much for that. No questions? If not, thank you very much and we will have the next speaker, please.

Mr. Berg:

Thank you.

Mr. Topenio:
last speaker, Jean Souza.

Next speaker is Pat Gegen, followed by our

Ms. Yukimura: While Mr. Gegen is coming up, I just want to welcome the class from the media champions from Chiefess and let you know that the Bill before us that we are having a public hearing on right now, is Bill No. 2541, which proposes to reduce the percentage of real property taxes that are earmarked for public lands, acquisition, and public access. The proposal in the Bill is to reduce the percentage from one point five percent (1.5%) to five percent (5%).

PAT GEGEN:

Point five percent (0.5%)

Ms. Yukimura: Point five percent (0.5%). One point five percent (1.5%) to half a percent (0.5%), right. Please, state your name and proceed with your testimony.

Mr. Gegen: Well, thank you very much. For the record, my name is Pat Gegen. I am testifying today as an individual citizen. I want to start out with the Open Space Commission. It was established ten (10), twelve (12) years ago by the County Council obviously seeing the need to preserve some of our spaces and make sure access was available for all of our citizens. About two (2) to three (3) years ago, I believe it was Act 925 or Bill No. 925 that went through which actually expanded the powers of the Open Space because before it was confined at just looking acquisition. The current resolution or the parameters that are out there also includes looking at the accesses, the existing accesses, and trying to make sure that those stay open. Then just last year, the amount was increased. It had previously had been at half percent (0.5%) of the real property tax that was being taken, but the Council thought it important enough to go ahead and increase that amount. At this point, decreasing or cutting back the amount readily available and set asides is not in the best interest of our community, in my opinion. I ask you, why is this being done? Take a look at what is really causing this. It is not because this Council or this government does not still value open space. It is not because we do not want to restrict access. It is not because we do not want to open it up more, but it is because of spending that has taken place in the government that is becoming unsustainable fiscally, the way the spending has been occurring. This is especially concerning at this point and time because some of our current assets have been neglected. Some of our park facilities have been in disrepair for long periods of time and that should not be occurring. If you take a look just at the open space, the accesses. How many accesses have we lost over time because they were not maintained and we did not make sure that access was still there? To give a couple of examples, if you look at Ka'aka'aniu, which is commonly known as Larsen's Beach. Right now, the County has two (2) easements there. Why do we have two (2)? We originally had one (1). It basically went straight down, but most people started using an illegal access going on private property. Well, by the time that they have established a fence there, the County had to get another easement because the easement that we had was overgrown and neglected. Why are we not maintaining these easements we have? If we do not, we lose them. Another

example, Pāpa'a Bay access. I was also on the Open Space Commission filed trip and it was very interesting because Pāpa'a Bay, most people just drive in close to the access, actually cut across private property before they get to what is the legal access. The legal access really starts down at the parking lot. We were with somebody with the Planning Commission, one of our County lawyers, as well as lawyers from the property owners, and they could not show us where the correct access was. We may have been trespassing. The County is not maintaining the accesses we have and now we want to cut back on this money that will help us establish these things, help us identify them?

Mr. Topenio: Three (3) minutes.

Ms. Yukimura: You have three (3) minutes more.

Mr. Gegen: Thank you. The one other one I would like to talk about is also on the field trip. On the *mauka* side of the Kilauea River from the Old Quarry Road, there is an access there that allows people to be on the *mauka* side of the river, but you know what? Right now, you cannot even find it. It is overgrown. Where we were told it was, the ground there is so thick nobody would ever be get through it. So, instead of taking a look at decreasing this amount, I would say, please keep it the same, allow the Open Space Commission to continue to pursue the actions that they are in trying to make sure these are open. If you do see fit that it needs to be cut, what I would ask is let us take that eight hundred fifty thousand dollars (\$850,000) to one million dollars (\$1,000,000) or whatever it is, let us put out Request For Proposal (RFP) , hire a trail crew, and open the trails that we have. Use that money for what it is intended for. Please, let us keep the Open Space access going and increase the abilities of that Commission. Thank you.

Ms. Yukimura: Thank you. Any questions? If not, thank you.

Mr. Gegen: Thank you.

Ms. Yukimura: Before we get to the next speaker, I just want to note that Councilmember Hooser was the introducer of the Charter amendment, which put aside the one percent (1%)...no, sorry, up to two percent (2%) of real property tax revenues for open space and public access. I was the tag team that followed him when we left and we did the Ordinance that established the percentage. Ms. Souza.

Mr. Hooser: Thank you.

Ms. Yukimura: Thank you.

JEAN SOUZA: Good afternoon.

Mr. Hooser: Good afternoon.

Ms. Souza: My name is Jean Souza and I am one of the original members of the Public Access, Open Space, and Natural Resources Preservation Commission, having served more than two (2) terms as a Council appointee to the Commission. My term expired about two (2) years ago. I am strongly opposed to Bill No. 2541. I think it is a misnomer to refer to this Commission as the Open Space Commission or to think that the Commission solely focuses on public access. I think just to remind folks, the fund is to be used to acquire lands or property entitlements for nine (9) categories of lands. It is for

public outdoor recreation education; preservation or historic or culturally important land areas and site; protection of significant habitats and ecosystems including buffer zones; preservation of forests, beaches, coastal areas, and agricultural lands; protection of watershed lands to preserve water quality and the water supply; conserving lands in order to reduce erosion, floods, landslides, and runoff; improving public access and the enjoyment of public lands and open space; acquiring public access and open space; and conserving land for open space and scenic values. Just any one (1) or two (2) of these purposes would require a tremendous amount of money. When we are talking about the potential needs to protect lands in these nine categories, we need actually, more than what we have. To think that this is a proposal to reduce that back to what we have before, which is one half ($\frac{1}{2}$) of one percent (1%) seems unrealistic or just horrible from my point of view. We have had experience dealing with one half ($\frac{1}{2}$) of one percent (1%). Almost the entire time that I served on the Commission, we had to deal with that, which meant it was just a couple hundred thousand dollars every year. So, it took years to even accumulate even one millions dollars (\$1,000,000) and as you know, lands are tremendously expensive. We also have a number of significant issues that are happening around the island. We have competing land uses, there are some areas that public access has been lost, and we have inadequate inventory of historical trails. Some of these things require more research so that we can, hopefully the County, can prosecute or restore or remediate lost accesses.

Mr. Topenio: Three (3) minutes.

Ms. Yukimura: That is three (3) minutes, but you have another three (3).

Ms. Souza: Thank you. I am going to go ahead and take it. We all know it take too many years for the fund to build up at one half ($\frac{1}{2}$) of one percent (1%). So, it would be nice if we had more, but certainly one and a half percent (1.5%) is better. I am strongly opposed to this Bill.

Ms. Yukimura: Thank you. Any questions? Thank you very much. Next speaker.

Mr. Topenio: One (1) final speaker is Jennifer Luck.

Ms. Yukimura: Aloha Jennifer.

JENNIFER LUCK: Good afternoon everybody.

Ms. Yukimura: Please introduce yourself.

Ms. Luck: Good afternoon. For the record, my name is Jennifer Luck and I am the Kaua'i Island Director for the Hawaiian Islands Land Trust. I am here to testify in opposition to Bill No. 2541. Before I read my own statement, I would like to read a quote by our Executive Director that I think is timely and very appropriate for today. "Hawaii's long-term well-being environmentally, economically, and culturally is directly linked to the land and the choices we make about it." Reducing the Open Space Fund to half percent (0.5%), I think, would be the wrong decision at this time. I understand and respect that the Council and the Administration are grappling with difficult issues, but protecting open space throughout Kaua'i and all that it encompasses, recreational lands, culturally significant lands, agriculturally important lands. It would help to ensure our sustainability should absolutely be a priority of this Council and the Administration. The Kaua'i Open Space Fund, if reduced to half percent (0.5%),

would have one of the lowest amounts in the fund of any similar funds around the State. So, Hawai'i Island Fund gets at a minimum two percent (2%) each year from the property tax revenues. Maui County gets at least a minimum of one percent (1%). O'ahu get half percent (0.5%) to their Open Space Fund, but half percent (0.5%) to their Affordable Housing Fund and they have over four million dollars (\$4,000,000) in their fund right now because their property tax levels are so much higher than ours. Those funds have been incredibly instrumental in protecting and saving some really, really important places. A couple of examples, on the Big Island a two hundred seventeen (217) acre property called O'oma was recently purchased by the County using Open Space funds. On Maui two hundred seventy-seven (277) acre refuge that is owned by the Land Trust was purchased using Open Space funds and most recently on O'ahu, there is nine (9) acre property that include Maunawila *heiau* that is owned by the McGregor family, including Daveon McGregor, that will close probably this week. That was also purchased using Open Space funds. So, I think if the Kaua'i Open Space Fund was reduced to half percent (0.5%), it would be detrimental to the viability of that fund and the ability of organizations like the Hawaiian Islands Land Trust to use that fund to acquire important properties. Back in 2010, we worked closely with the County and with the State to expand Black Pot Beach Park. We used a portion of the fund to purchase a three-quarter ($\frac{3}{4}$) acre parcel at Hanalei Bay.

Mr. Topenio:

Three (3) minutes.

Ms. Yukimura:
another three (3) more.

That is three (3) minutes, but you have

Ms. Luck: Okay. I was just getting started anyway. That deal was a wonderful collaboration between the County and the State and a private landowner. We were able to make that happen to expand that park, which is one of the most highly used parks because of the Open Space Fund and because of the work of the Open Space Commission. So, I was really pleased to see that funding increase to one and a half percent (1.5%) because land cost here on Kaua'i are so high and will probably continue to rise. If anything, we need to support that fund more than the level it is already supported at. I think if we did that and continued to support that and continued to show leadership, the Council showed leadership, the Administration showed leadership prioritizing protecting open space and protecting some of these scenic view planes and iconic lands, then we could really effect some positive lastly change for our community and for our island. Development is going to continue to happen. Development pressure on Kaua'i is going to continue to rise and if the Administration and the Council does not come combat that at some level with support for funds like this, then our island will change dramatically and the lifestyle of people that live here will change dramatically. So, as a member of the Hawaiian Island Land Trust, as a staff member, I am privileged to do the work I do. I have a great respect for all of you in the work you do and the time and attention you give to these matters. I would just ask that you think about this very seriously and understand that this is a really, really important decision. Thank you.

Ms. Yukimura: Thank you very much. Any questions? If not, thank you very much, Jennifer. Is there another speaker?

Mr. Topenio:

There is none at this time.

Ms. Yukimura: We have no other listed speakers. Is there anyone else in the audience who wishes to testify? Marg.

MARG FREEMAN: Marg Freeman.

Ms. Yukimura: Is there a blue light?

Ms. Freeman: Yes.

Ms. Yukimura: Okay. Good.

Ms. Freeman: Can you hear me?

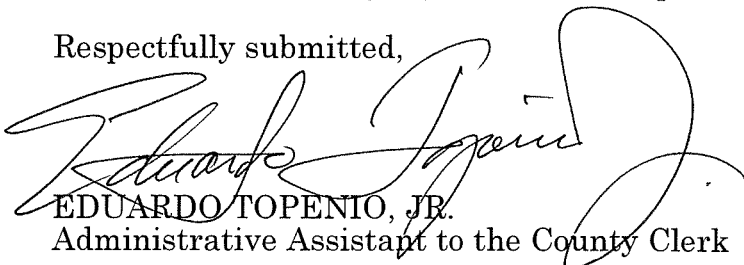
Ms. Yukimura: Thank you.

Ms. Freeman: I just want to back up what has been said here. It is interesting to me that it is always the money that is for public use that gets cut. I mean, why do we not cut something else? Why cut the most important thing? There was a reason that the amount of money was raised from point five percent (0.5%) to one point five percent (1.5%), and that was because we needed more, not less, money. Every time we put off acquiring some piece of land or some access, the price goes up. So, in five (5) years is it going to worse than it is now, the amount we will have to pay for things. I just want to say that we really should not cut it. There is no reason to cut it and we should not cut it. The public needs this land and this money to acquire land and you folks are part of the public too.

Ms. Yukimura: Thank you, Marg. Any questions for Ms. Freeman? If not, thank you very much. Is there anyone else who would like to speak on this Bill?

There being no further testimony, the public hearing adjourned at 2:09 p.m.

Respectfully submitted,



EDUARDO TOPENIO, JR.
Administrative Assistant to the County Clerk

